

**RESOLUTION NO. 23-**

**RESOLUTION OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS DENYING THE APPEAL AND AFFIRMING THE DENIAL OF AP\_2023-0015 WHICH REQUESTED AUTHORIZATION FOR A DRIVE-THROUGH WINDOW AT AN EXISTING CANNABIS DISPENSARY**

WHEREAS, Editte Lerman of Emerald Law Group, as agent for the applicant Kure Wellness, Inc., and property owner Russell Green filed an application for an Administrative Permit Modification with the Mendocino County Department of Planning and Building Services to authorize a drive-through window at an existing cannabis dispensary located at 800 Lake Mendocino Dr, Ukiah (APN: 168-224-31) (the "Project"); and

WHEREAS, in accordance with the applicable provisions of law, the Zoning Administrator held a public hearing on June 23, 2023, at which time the Zoning Administrator heard and received all relevant testimony and evidence presented orally or in writing regarding the Project. All interested persons were given an opportunity to hear and be heard regarding the Project; and

WHEREAS, the Zoning Administrator denied the Project subject to the findings contained in the staff report; and

WHEREAS, on June 30, 2023, the Applicant filed an appeal of the decision by the Zoning Administrator (the "Appeal"); and

WHEREAS, the Mendocino County Board of Supervisors held a Noticed Public Hearing on December 5, 2023, to hear all relevant testimony and evidence presented orally or in writing regarding the Project. All interested persons were given an opportunity to hear and be heard regarding the Project.

NOW, THEREFORE, BE IT RESOLVED that on the basis of the whole of the record before it, the Mendocino County Board of Supervisors denies the Appeal and makes the following findings and determinations:

1. The Board of Supervisors hereby affirms the determinations of the Zoning Administrator.
2. The Board of Supervisors hereby denies the Appeal and affirms the Zoning Administrator's denial of the Project, finding as follows:
  - a. Section 20.243.050 of the Mendocino County Code provides that cannabis facilities shall comply with all applicable regulations in the Mendocino County Code and State law.
  - b. Subdivision (a) of Section 15025 of Division 19 of Title 4 of the California Code of Regulations provides that the sale and delivery of cannabis goods shall not occur through a pass-out window or slide-out tray to the exterior of the licensed premises, that licensed retailers or microbusinesses shall not operate with a drive-in or drive-through at which cannabis goods are sold to persons within or about a motor vehicle, and that no cannabis goods shall be sold and/or delivered by any means or method to any person within a motor vehicle.
  - c. Subdivision (e) of Section 15025 of Division 19 of Title 4 of the California Code of Regulations further provides that a commercial cannabis business may have a drive-in or drive-through window only if, prior to June 1, 2018:
    - i. the commercial cannabis business received a license or permit from the local jurisdiction for a premises including a drive-in or drive-through window which was disclosed on the local application; or

- ii. The commercial cannabis business has submitted an application to the local jurisdiction for a license or permit which, at the time of submission of the application, included information that a drive-in or drive-through window was already part of, or proposed to be part of, the premises, and after June 1, 2018, the local jurisdiction approves the premises with a drive-in or drive-through window.
- d. The Department of Planning and Building Services received an application from the property owner for an administrative permit pursuant to Chapter 20.243 for an expansion of the commercial cannabis operations at the subject location prior to June 1, 2018. This application was approved as AP\_2017-0109, but did not disclose either any previous use of an “existing drive” as a drive-in or drive-through nor any intent to use the “existing drive” as a drive-in or drive-through.
- e. Prior applications by the property owner made to the Department of Planning and Building Services did not include information that a drive-in or drive-through was already part of or proposed to be a part of the premises.
- f. While the dispensary at the subject property was given temporary authorization for a drive-through during the COVID-19 pandemic, this authorization was granted after June 1, 2018, has since expired and the state of emergency relating to COVID-19 has subsequently been terminated.
- g. While claims have been made about prior use of a window at the subject property being operated as a drive-in or drive-through, no information or documentation has been presented showing that this use was ever approved as part of any prior planning or building permit issued by the Department of Planning and Building Services.
- h. Because there has been no prior approval of a drive-in or drive-through at the subject property by the County (other than on a temporary basis during a pandemic), the property is ineligible to have a drive-through pursuant to Section 15025 of Division 19 of Title 4 of the California Code of Regulations and as such approval of the requested Administrative Permit modification would be contrary to State law.
- i. Pursuant to Mendocino County Code Section 20.192.025, an application for modification of an administrative permit shall be denied if it cannot be conditioned by adequate requirements to ensure compliance with applicable regulations. In this instance, the applicable regulation is that the permit must comply with State law, which require that the drive-through have been applied for or permitted prior to June 1, 2018. The permit cannot be adequately conditioned to ensure compliance with this regulation or the County Code requirement of Section 20.243.050.

BE IT FURTHER RESOLVED that the Board of Supervisors designates the Clerk of the Board of Supervisors as the custodian of the documents and other materials, which constitutes the record of proceedings upon which the Board of Supervisors’ decision herein is based. These documents may be found at the office of the Office of the Clerk of the Board of Supervisors, 501 Low Gap Road, Room 1010, Ukiah, CA 95482.

The foregoing Resolution introduced by Supervisor \_\_\_\_\_, seconded by Supervisor \_\_\_\_\_, and carried this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by the following vote:

AYES:  
NOES:  
ABSENT:

WHEREUPON, the Chair declared said Resolution adopted and SO ORDERED.

ATTEST: DARCIE ANTLE  
Clerk of the Board

\_\_\_\_\_  
GLENN MCGOURTY, Chair  
Mendocino County Board of Supervisors

\_\_\_\_\_  
Deputy

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

*APPROVED AS TO FORM:*  
CHRISTIAN M. CURTIS  
County Counsel

BY: DARCIE ANTLE  
Clerk of the Board

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Deputy